

EXHIBIT 34

Gaston, Sue

January 24, 2008

Washington, DC

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -
IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

(cross captions appear on following pages)

Videotaped deposition of SUE GASTON

Volume I

Washington, D.C.

Thursday, January 24, 2008

9:00 a.m.

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<p>1 A. Yes.</p> <p>2 Q. And did you understand that the average</p> <p>3 wholesale price for multiple source drugs in</p> <p>4 particular was not a reliable indicator of the cost</p> <p>5 at which pharmacies and physicians purchased drugs?</p> <p>6 MS. MARTINEZ: Objection to form.</p> <p>7 MS. ALBEE: Objection to the form.</p> <p>8 MR. WINGET-HERNANDEZ: Objection, form.</p> <p>9 A. As I stated before, my understanding is</p> <p>10 that I looked at average wholesale price, direct</p> <p>11 price, wholesale acquisition costs, the prices that</p> <p>12 were available in the compendia, and generally</p> <p>13 speaking the average wholesale price was a higher</p> <p>14 price at that point others.</p> <p>15 Q. Did you have an understanding that the</p> <p>16 difference between average wholesale price published</p> <p>17 in the compendia and what people were buying the</p> <p>18 drugs for was particularly variable when it came to</p> <p>19 multiple source drugs as opposed to sole source</p> <p>20 drugs?</p> <p>21 MR. WINGET-HERNANDEZ: Objection, form.</p> <p>22 MS. ALBEE: Objection, form.</p>	<p>1 A. Just what they're saying.</p> <p>2 Q. What are they saying?</p> <p>3 A. So independently I guess states on their</p> <p>4 own shouldn't apply the 150 percent markup.</p> <p>5 Q. If you go to the next paragraph, the</p> <p>6 second full sentence starts with "since." Do you</p> <p>7 see that?</p> <p>8 A. No.</p> <p>9 Q. "Since we are not placing" --</p> <p>10 A. Where are you?</p> <p>11 Q. The next paragraph down about eight lines</p> <p>12 down.</p> <p>13 A. The next paragraph down?</p> <p>14 Q. Yeah.</p> <p>15 A. Okay. "Since we are not"? Okay.</p> <p>16 Q. "Since we are not placing maximum payment</p> <p>17 limits on individual drugs, drugs with high</p> <p>18 compendia prices could generate extremely high</p> <p>19 payment levels. Unless an agency's payment</p> <p>20 methodology ensured otherwise, a Medicaid agency</p> <p>21 could end up paying inappropriately high rates for</p> <p>22 some drugs while still being in compliance with the</p>
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<p>1 MS. MARTINEZ: Objection, form.</p> <p>2 A. I can't say that.</p> <p>3 Q. Is that something that you were made</p> <p>4 aware of in multiple OIG reports?</p> <p>5 MS. MARTINEZ: Objection, form.</p> <p>6 A. It's mentioned in the OIG reports, yes.</p> <p>7 Q. Let me ask you to look at page 685 of</p> <p>8 this document, the Bates page ending in 685. The</p> <p>9 last column, the first full paragraph starts with</p> <p>10 "stage agencies." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. It says "State agencies should determine</p> <p>13 independent of the 150 percent formula appropriate</p> <p>14 payment levels for the listed multiple source drugs.</p> <p>15 We would not expect a state agency to adopt directly</p> <p>16 the upper limit methodology as a payment method</p> <p>17 because it does not gear payments to markups</p> <p>18 appropriate to the actual costs of acquiring and</p> <p>19 dispensing these drugs." Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Do you have an understanding of what that</p> <p>22 means?</p>	<p>1 aggregate upper limit.</p> <p>2 "Nevertheless, we believe states may</p> <p>3 establish maximum payment limits in order to offset</p> <p>4 the minimum payment levels necessary to ensure</p> <p>5 reasonable compensation for very low priced drugs."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have an understanding of what that</p> <p>9 last sentence means, establishing minimum payment</p> <p>10 levels necessary to ensure reasonable compensation</p> <p>11 for very low priced drugs?</p> <p>12 A. Well, my understanding of what they're</p> <p>13 trying to say is that states have the flexibility to</p> <p>14 set a MAC on drugs that they feel are not priced</p> <p>15 appropriately.</p> <p>16 Q. Do you know what they're talking about or</p> <p>17 how do you interpret the comment reasonable</p> <p>18 compensation for very low priced drugs?</p> <p>19 A. That if they feel that the drug cannot be</p> <p>20 obtained in their state because the price is low,</p> <p>21 that they have the flexibility to set a MAC on a</p> <p>22 drug so that it will be obtainable within their</p>

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<p>1 state.</p> <p>2 (Exhibit Abbott 461 was</p> <p>3 marked for</p> <p>4 identification.)</p> <p>5 MR. TORBORG: I'm told that we have five</p> <p>6 minutes left on the tape and it's within about an</p> <p>7 hour. So let's go ahead and take a break here.</p> <p>8 THE VIDEOGRAPHER: This is the end of</p> <p>9 tape 4. Off the record at 3:17.</p> <p>10 (Recess.)</p> <p>11 THE VIDEOGRAPHER: This is the beginning</p> <p>12 of tape 5 in the deposition of Ms. Gaston. On the</p> <p>13 record at 3:43.</p> <p>14 MR. TORBORG: Welcome back, Ms. Gaston.</p> <p>15 THE WITNESS: Thank you.</p> <p>16 MR. TORBORG: I wanted to cover</p> <p>17 something, some housekeeping matters on the record</p> <p>18 very quickly. I understand from Ms. Martinez that</p> <p>19 there are some additional documents from Ms.</p> <p>20 Gaston's files or legacy files that are yet to be</p> <p>21 produced. Is that right?</p> <p>22 MS. MARTINEZ: Yes.</p>	<p>1 you said from 1991 through 2003 when you were doing</p> <p>2 that, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And those three people were -- three</p> <p>5 additional people were Peter Rodler, Cindy Bergin</p> <p>6 and Gail Sexton?</p> <p>7 A. Gail Sexton worked on the FULs after</p> <p>8 2003.</p> <p>9 Q. Did she have any involvement with FULs</p> <p>10 prior to 2003?</p> <p>11 A. No.</p> <p>12 Q. What was she doing prior to 2003?</p> <p>13 A. I'm not sure. She was employed by CMS</p> <p>14 around that time, but I don't know exactly when she</p> <p>15 started.</p> <p>16 Q. And Mr. Rodler I understand was somebody</p> <p>17 who had been at HCFA and the Medicaid Bureau prior</p> <p>18 to you being there?</p> <p>19 A. Correct.</p> <p>20 Q. And then at some point he retired or</p> <p>21 moved on?</p> <p>22 A. Correct.</p>
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<p>1 MR. TORBORG: And those are ones that</p> <p>2 you're working on currently and we intend to</p> <p>3 schedule a second day with Ms. Gaston so that we can</p> <p>4 go over those documents.</p> <p>5 MS. MARTINEZ: I believe what you told me</p> <p>6 is that you'd look at them and see if you need an</p> <p>7 additional day.</p> <p>8 MR. TORBORG: That's true.</p> <p>9 MS. MARTINEZ: But naturally --</p> <p>10 MR. TORBORG: I will need an additional</p> <p>11 day anyway.</p> <p>12 MS. MARTINEZ: Okay. That's what I</p> <p>13 thought.</p> <p>14 MR. TORBORG: Okay.</p> <p>15 BY MR. TORBORG:</p> <p>16 Q. Okay. Going back to the subject of</p> <p>17 federal upper limits, Ms. Gaston, I want to ask just</p> <p>18 a few very general background questions about how</p> <p>19 the process worked at HCFA, who was involved in what</p> <p>20 aspects and things of that nature. Earlier you</p> <p>21 testified or you identified three people at CMS who</p> <p>22 were involved in establishing the FULs. I believe</p>	<p>1 Q. Do you know when he retired or moved on?</p> <p>2 A. No.</p> <p>3 Q. Can you give me a sense? Was it early</p> <p>4 '90s, late '80s?</p> <p>5 A. I'm guessing it was in the '90s. Not in</p> <p>6 the late '90s, but I'm not sure.</p> <p>7 Q. And Cindy Bergin, when did she work at</p> <p>8 CMS on the FUL issues?</p> <p>9 A. She was hired -- I'm not sure exactly the</p> <p>10 date -- probably eight or nine years ago. And I</p> <p>11 mentored here on the FULs until I left in 2003.</p> <p>12 Q. So she would have been someone that was</p> <p>13 working on FUL issues starting in the mid to late</p> <p>14 '90s; is that fair to say?</p> <p>15 A. That's fair to say.</p> <p>16 Q. And did you work with Mr. Rodler on the</p> <p>17 federal upper limit issues or did you sort of</p> <p>18 succeed his duties?</p> <p>19 A. He taught me how to handle the federal</p> <p>20 upper limit program. And then when he left I took</p> <p>21 it over.</p> <p>22 Q. And did Cindy Bergin take it over from</p>

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<p>1 you --</p> <p>2 A. Yes.</p> <p>3 Q. And then at some point is it your</p> <p>4 understanding that Gail Sexton took it over from</p> <p>5 Cindy Bergin or were they both working on it?</p> <p>6 A. She -- Cindy trained Gail and then Gail</p> <p>7 took it over when Cindy left the area.</p> <p>8 Q. So it sounds to me -- and please tell me</p> <p>9 if I'm mischaracterizing this or misunderstanding</p> <p>10 this -- that the mechanics of the FUL program were</p> <p>11 handled primarily by one person, but there was some</p> <p>12 overlap in training. Is that right?</p> <p>13 MS. MARTINEZ: Objection, form.</p> <p>14 A. Generally speaking. There were periods</p> <p>15 when it was just one person. And then when there</p> <p>16 were two, even though one was training they were</p> <p>17 both working on it.</p> <p>18 Q. And did you first get involved -- is it</p> <p>19 your recollection that a transition between yourself</p> <p>20 and Mr. Rodler happened in the early '90s; is that</p> <p>21 fair to say?</p> <p>22 A. When Pete retired then I took it over.</p>	<p>1 Q. Was that the same position that you had?</p> <p>2 A. Yes.</p> <p>3 Q. So you were equals, so to speak?</p> <p>4 A. Most of the analysts in our area are all</p> <p>5 health insurance specialists.</p> <p>6 Q. Okay. And you indicated that Mr. Reed</p> <p>7 would have some input into the FULs and I think you</p> <p>8 used the word even the final say.</p> <p>9 A. Correct.</p> <p>10 Q. What does that mean?</p> <p>11 A. He's the division director.</p> <p>12 Q. So what would the extent of his</p> <p>13 involvement be with FULs? When would he get</p> <p>14 involved?</p> <p>15 A. Throughout -- whenever necessary he was</p> <p>16 there to discuss issues that might need to be</p> <p>17 discussed. The final publication he was aware of</p> <p>18 and would have to give his okay in order to send it</p> <p>19 through or any letters that would go through</p> <p>20 generally were from an authority higher than me.</p> <p>21 Q. Can you tell me what kind of issues would</p> <p>22 come up in the FUL program that would necessitate</p>
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<p>1 Q. And was there anyone else working on the</p> <p>2 FUL issues besides yourself from that point until</p> <p>3 Cindy Bergin came on in the mid to late '90s?</p> <p>4 A. There was a period of time where I</p> <p>5 trained Altamease Arnold, but --</p> <p>6 Q. Was she in your office?</p> <p>7 A. She was in our office. But she was</p> <p>8 never -- she never really worked on the program per</p> <p>9 se.</p> <p>10 Q. When you say per se, what do you mean by</p> <p>11 that? Officially or what does that mean?</p> <p>12 A. She never really learned the program to</p> <p>13 work on it.</p> <p>14 Q. What does it mean to learn the program?</p> <p>15 A. When you try to teach someone the program</p> <p>16 but they choose not to absorb what you're teaching.</p> <p>17 Q. Got it. Is she still working at CMS?</p> <p>18 A. No.</p> <p>19 Q. When did she leave CMS?</p> <p>20 A. She retired last year.</p> <p>21 Q. What was her position at CMS?</p> <p>22 A. Health insurance specialist.</p>	<p>1 his involvement?</p> <p>2 A. Maybe just general discussion.</p> <p>3 Especially when I was the only one working on the</p> <p>4 FUL program, just a general discussion of maybe</p> <p>5 particular drugs, the pricing just somebody to have</p> <p>6 an open discussion about how we're setting the</p> <p>7 prices, because there's manual review involved.</p> <p>8 Q. What do you mean when you say there's</p> <p>9 manual review involved? And we'll get into a little</p> <p>10 bit more the mechanics, but generally speaking what</p> <p>11 do you mean by that?</p> <p>12 A. Generally you have paper that you work</p> <p>13 from. You have the compendia with all the drug</p> <p>14 numbers on it and the pricing. And sometimes you</p> <p>15 have to make determinations if it looks like a drug</p> <p>16 is truly available or not, whether you should follow</p> <p>17 up and see if it's available. Sometimes it's better</p> <p>18 to discuss it with someone to see that you're</p> <p>19 looking at it the same way that they might be</p> <p>20 looking at it.</p> <p>21 Q. When you say truly available, do you</p> <p>22 remember is the product available from a particular</p>

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